Association for Local Telecommunications Services

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 20, 1999

William E. Kennard
Chairman
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Advanced Wireline Services, CC Docket No. 98-147

Dear Chairman Kennard:

Today, the telecommunications industry is deploying new technologies and bringing advanced services to American business and residential customers at a faster rate than ever before in our history. These new technologies are being deployed by both incumbent local exchange carriers (ILECs) and by competitive local exchange carriers (CLECs), largely because Congress and federal and state regulators have established policies to promote local telephone competition. For this reason, in their responses to House Commerce Committee Chairman Bliley's request for competitive information last fall, both CLECs and ILECs agreed that the "Act is working."

In reaching a conclusion in the Advanced Wireline Services proceeding, the Federal Communications Commission has the opportunity either to take significant steps forward to promote the competitive deployment of advanced technologies or abandon this pro-competitive path in favor of premature regulatory relief for the incumbent local telephone companies. ALTS urges the Commission to continue on the path of promoting competition -- a path that has demonstrated enormous success so far and could bring even greater benefits in the near future. This letter sets forth ALTS' views as to the measures the Commission can take in this order to encourage competition and promote the deployment of new, advanced technologies for all Americans.

First, the Commission should strengthen the loop and collocation remedies proposed in the Advanced Wireline Services Notice of Proposed Rulemaking. As Assistant Secretary Larry Irving stated in his January 11, 1999 letter to you, the Commission's proposals to strengthen collocation requirements and promote the

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availability of loops will advance the rapid, efficient deployment of broadband services to all Americans[1].

One significant issue, however, did not receive sufficient attention in the NTIA letter --- the treatment of "enhanced extended links." Making "enhanced extended links (EELs)" available to competitors as unbundled network elements (UNEs) would provide CLECs with the functionality of loops, central office aggregating and routing equipment, and interoffice transport. EEL availability will eliminate the need for CLECs to collocate in every ILEC central office, thereby reducing the effective cost of interconnection and conserving central office space. Allowing CLECs to collocate efficiently in central offices and use EELs to serve customers served by additional ILEC central offices promotes the availability of competitive advanced services to less densely populated areas and to residential and small business customers. Therefore, we urge the Commission to determine that ILECs must offer extended links as UNEs.[2]

Second, ALTS has several concerns about the proposal to allow the ILECs to place certain data services and facilities in a separate subsidiary that would not be made available to competitors under section 251(c). ALTS questions the Commission's legal authority to establish such subsidiaries outside of the requirements of the 1996 Act. If the Commission nevertheless decides to adopt the separate affiliate proposal in the Advanced Wireline Services NPRM, we strongly believe that the Commission should take steps to maximize the separation between the subsidiary and the incumbent telephone company. In essence, ALTS believes that the ILECs will continue to have the incentive to give its subsidiary favorable regulatory treatment. If the FCC permits the ILEC to transfer essential data services and equipment to the subsidiary and then gives that subsidiary favorable access to the ILEC's local network, the ILEC could obtain an unfair advantage that could discourage investors from investing in CLECs over the long run. In order to ensure that CLECs remain on the same footing as the ILEC subsidiary, the Commission must establish several safeguards that will reduce the ILEC's ability to discriminate and to increase the Commission's ability to prevent such discrimination. These separation requirements should include the following:

a) We agree with Assistant Secretary Irving that outside ownership will increase the likelihood that the affiliate will act independently of the ILEC (NTIA January 11, 1999 letter at 9). We recommend that, at a minimum, 10 percent of the subsidiary's equity should be owned by parties outside the control of the ILEC. We also suggest that at least one Board member should be independent of the ILEC.

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1 Letter from The Honorable Larry Irving, National Telecommunications and Information Administration, United States Department of Commerce, to Chairman William E. Kennard, January 11, 1999, at 1, 16.

2 The legal justification for requiring ILECs to make EELs available as UNEs is set forth in a recent ex parte submission from Intermedia Communications, Inc. on January 19, 1999.

b) We also agree with Assistant Secretary Irving that there should be no transfer of customer proprietary network information from the ILEC to the affiliate without the customer's consent. (NTIA letter at 10).

c) Assistant Secretary Irving also points out that any brand name use by the affiliate requires that the affiliate compensate the ILEC as is standard process in the industry today. (NTIA Letter at 13-14).

d) If the Commission allows joint marketing, we recommend that the Commission follow the approach suggested by Assistant Secretary Irving, namely that the affiliate, but not the ILEC, be permitted to joint market. (NTIA letter at 12).

e) We also stress that the Commission should make it clear that the nondiscrimination provision precludes the ILEC from taking such measures as offering volume discounts that benefit only the affiliate.

f) If the Commission adopts a separate affiliate approach, there is no reason for an arbitrary sunset.

g) Also, there is one key aspect of the separate affiliate regime that warrants special attention. While limited transfers of DSLAMs from the ILEC to the affiliate appear reasonable as long as fair market value is paid (as Assistant Secretary Irving recommends in the January 11, 1999 letter at 10, n.34), the opportunity to transfer equipment raises significant issues with respect to collocation space, which is scarce, and often takes CLECs months to obtain. Transfer of collocation space would give affiliates the instant ability to serve customers while CLECs would continue to wait months for ILECs to provision space. Therefore, the Commission should adopt an interim resale requirement so that the affiliate would not be relieved of its 251(c) obligation to resell DSL at wholesale prices until there are at least two other unaffiliated DSL carriers collocated and offering service in the central office. Otherwise, the ILEC should not be allowed to transfer collocation space to the affiliate.

h) Finally, it is essential that the Commission conduct a separate expedited proceeding concerning each separate subsidiary established by an ILEC before the subsidiary is allowed any regulatory relief from the Section 251(c) requirements.[3] The burden should be on the affiliate and the ILEC to demonstrate that they meet the separation requirements described above AND the Commission's loop and collocation requirements. This separate proceeding will aid in the Commission's enforcement of its rules. In no way should the Commission allow the subsidiary to gain relief from the Act by "self-certifying" that it complies with the loop unbundling, collocation and separation requirements.

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[3] ALTS expresses no opinion at this time whether this separate proceeding should be conducted under section 10 (the forbearance approach) or under section 251 (the definitional approach).

Third, we strongly urge the Commission not to provide interLATA relief or to alter LATA boundaries for the affiliate in a manner that would provide it with significant LATA relief until the RBOC has complied with the 14-point competitive checklist and the other requirements of section 271. To provide such relief would violate the Act, would reduce the incentives of the RBOCs to open their local networks to competition, and would lend political support to those who are seeking to reopen the Act. Giving such interLATA relief to the RBOCs before the RBOCs open their networks would take a giant step backward and reward the monopolies for failing to open their networks to competition. The Commission should instead recognize the substantial growth in new technology deployment over the past three years and seek to encourage even further development by continuing its efforts to remove all barriers to the growth of local telecommunications competition.

We appreciate your consideration of these views. For further information, please call me or Cronan O'Connell at 202-969-2587.

Sincerely,

John Windhausen, Jr.

John Windhausen, Jr.
President

Cc: Commissioner Ness
Commissioner Furchtgott-Roth
Commissioner Powell
Commissioner Tristani
Kathy Brown
Lawrence Strickling